Testimony
by
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before the
**House Committee on International Relations**
Subcommittee on Oversight & Investigations

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The hearing title, "Offshore Banking, Corruption and the War on Terrorism," provides a wide scope of issues that could be addressed. Testimony priority has been suggested regarding the role of international banks. I am privileged and pleased to respond to your request, but with your permission, will take some latitude with the subject matter.

For the past fifteen years, our organization has been tasked with the mission of recovering stolen money and returning it to innocent investors or consumers in numerous state and federal fraud actions. In almost all cases, we are appointed by a Federal District Court on the nomination of the Department of Justice, Federal Trade Commission, Securities and Exchange Commission, Commodity Futures Trading Commission or a state regulator or law enforcement agency.

My comments here and verbally are strictly my own and should not be attributed to any of the agencies or entities with which we are privileged to work.

Most of my colleagues in our organization are career bankers. We became focused on international asset recovery work when we were asked to be Trustee for the U.S. assets in the infamous BCCI case years ago. In spite of over a hundred recovery cases since then, we still tend to look at the world more from a bankers glassy-eyed perspective than from that of the law enforcement or legal community with which we work so closely. My comments today should be taken in that context.

You have specifically asked for comment regarding how international banks help US sanctioned countries get around those sanctions. Others on this panel are eminently more qualified to address that subject than am I. Let me just say that if the sanctions are unilateral, creative minds will find a way. Multilateral cooperation is the key. Unilateral action is fraught with problems and the opportunities for evasion are as many as there are situations. As a Federal Receiver, I have encountered substantial challenges in jurisdictions with strict bank secrecy laws. As a foreign litigant, my appointment by the US Court must be recognized in the foreign jurisdiction. Often, there are other challenges to the powers of a foreign litigant in international asset recovery actions. Even in circumstances where the US Court has ordered the return of misappropriated funds, or ordered the defendant to repatriate stolen funds, foreign courts may not recognize those orders in the absence of international treaties or cooperation agreements.

There is a multilateral treaty for cooperation in drug trafficking cases, the Vienna Convention, negotiated nearly 20 years ago, which has 170 signatories as of January 1, 2005. [1] There is no comparable multilateral treaty for cooperation in international fraud and asset recovery actions.

Please permit me to make a brief, arguably, slightly off topic observation on the subject on international cooperation. We need to continually look for multilateral opportunities to fight the war against the international criminals. A proposed law that is an excellent opportunity for such international cooperation is the US Safe Web Act that passed the Senate last week and will soon be before you. I strongly recommend it for your consideration. While this proposed legislation is designed to facilitate international cooperation in the area of internet fraud, it is an excellent example of the kind of multilateral cooperation needed today. You may consider it a stretch for me to raise the issue of this piece of proposed legislation in this venue today, but there is a close link between internet fraud and offshore banking, so, because of the timeliness of the issue, I thought I would mention it here.

Others on this panel have or will address the roles of the major multinational banks. I, on the other hand, would like to draw your attention to the issue of a regulatory climate that still exists in some smaller jurisdictions. In those several countries that have not adopted, or technically adopted but not vigorously enforced, the strict anti-money laundering standards of the major industrialized countries, led by the United States, imposed on the financial community, a banking environment survives where bad players can still thrive and carry on business for the benefit of money launderers, drug dealers, terrorists and other blights on our international financial system.

Unfortunately, sometimes the enthusiasm of some international banks that are upstream correspondents for banks from weakly regulated environments may be muted either by inattention or opportunism. Some may take advantage of the higher standards that have been adopted by banks active in the United States since passage of the USA Patriot Act. As you know, the Patriot Act imposes duties on correspondent banks in the United States to take some responsibility for the activity in so called ‘nested accounts’ where smaller institutions flow their dollar transactions through the accounts of larger ones. When new higher standards become the norm, an opportunity arose for those with weaker standards to profit.

Most offshore banking centers with legitimate international banking business have, in recent years, vigorously improved their anti-money laundering efforts. If our experience is representative, many have proven eager to assist in recovering stolen money for return to the victims of fraud. In most instances, however, the Receiver must initiate a private lawsuit, which reduces the amounts available for victim restitution.

But there remain recalcitrant jurisdictions who may pay lip service to anti-money laundering programs to the extent necessary to avoid black listing but whose real priority

[1] The 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, opened for signature December 20, 1988, entered into force November 11, 1990.

is obviously to protect indigenous institutions whose major role is to provide vehicles for hiding money from lawful authorities and rightful owners.

One of the Federal Trade Commission cases (FTC v. J.K. Publications)[2] my firm is handling has been cited often as a money laundering case study to illustrate that dark craft. I attach a graph my colleagues produced as a byproduct of our tracing investigation to illustrate just how it worked in that instance. This case and this graph have been used before to make various points about different aspects of money laundering.

I would like to use this case today to illustrate the different reactions by two different governments when confronted with evidence that stolen money was being laundered through one of their local banks.

In the Cayman Islands, we initiated a civil recovery action and presented the facts we developed in our case in California that documented the role of the Cayman bank in laundering the funds by the American fraudster. The Cayman authorities:

- Immediately investigated the bank, confirmed our findings and ordered the bank closed and liquidated.
- With proper court authority, promptly provided us with bank documentation to assist in the onward tracing of funds.
- Arrested and prosecuted bank officers and local launderers.
- Provided witnesses from the Cayman government in support of our U.S. case. Earlier this month my colleagues were in the Cayman Islands testifying in support of criminal prosecutions undertaken there.
- The money was returned to the U.S. Receiver for victim restitution.

Contrast that with the cooperation in one of the onward destinations of some of the money, the South Pacific island nation of Vanuatu where one of their banks, at the behest of the now defunct bank in the Cayman Islands, was sheltering a large block of the stolen money.

- After federal court agents traveled to Vanuatu with written introductions from the Federal Reserve and extensive documentation regarding the matter, the government and banking regulatory officials refused to meet or look at the offered documentation.
- The government tried to confiscate the money for their national treasury.
- Repeated requests to meet and discuss the matter continue to be ignored, years later.
- The bank continues to operate in spite of two of its officers being indicted for money laundering in another multi-million dollar fraud case in Memphis, Tennessee.[3] One defendant, Robert Murray Bohn, the President and CEO, was convicted of a RICO conspiracy and money laundering on October 25, 2005. The Bank's former Chairman, Thomas Montgomery Bayer, remains under indictment. In the Memphis case, the US Attorney's Office and the Justice Department are

[2] Federal Trade Commission v. J.K. Publications, et al., Case No. 99-00044 ABC (AJWX), (C.D. Cal.)
[3] USA v. Moss, et al, Case No. 2:02-cr-20165 BBD-ALL, (W.D. Tenn., Memphis)

seeking the forfeiture of approximately $14 million, representing a portion of the funds that were laundered by European Bank Limited through its correspondent bank account.

- In the JK Publications case, which is still pending in Vanuatu, the stolen funds, now in excess of $8 million, appear to be the bank's largest deposit.

Legitimate offshore international centers, such as the Cayman Islands, now have robust anti-money laundering programs and cooperate fully to recover illegal funds that find their way into their jurisdictions. Fringe financial centers have a more spotty record.

What should be of particular interest to this committee is that some of those same fringe centers on one hand frustrate U.S. policy, aiding and abetting the fleecing of U.S. consumers, and, on the other hand, apply for U.S. funding under various grant programs.

On the 2nd of this month, the Millennium Challenge Corporation, funded by U.S. tax dollars, signed a five year $65.69 million compact with Vanuatu. I have been to Vanuatu and I know that there are significant needs. But when a government repeatedly thumbs its nose at American courts and regulators and refuses even to meet and discuss if or how to return money undisputedly stolen from American citizens, is that country a proper priority for such aid?

I suggest that before such grants are given, or, in the case of Vanuatu, funded, countries with offshore financial centers should have their level of cooperation in the war against money laundering and international crime reviewed. Congress should insist that the funding of grants should be denied or deferred for those countries thwarting the efforts of the international regulatory and law enforcement community to curtail terrorist financing, money laundering or recovery of proceeds of fraud.

I particularly wish to emphasize the importance of encouraging cooperation in international fraud recovery. It is not enough for a jurisdiction to say they now bar black money if they do not facilitate the recovery of money stashed earlier.

Again, my thanks for giving me the opportunity to vent my frustration and point out a topic I think is worthy of your consideration. It will be a privilege to be of any assistance to the sub-committee in any way possible.

# Analysis of offshore activity originating from Receivership Defendants' funds